

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jennifer Jarett	Team: Team # 5	CCRB Case #: 200816688	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 11/13/2008 10:18 PM	Location of Incident: in front of 420 5th Avenue	Precinct: 14	18 Mo. SOL 5/13/2010	EO SOL 5/13/2010	
Date/Time CV Reported Fri, 11/14/2008 3:30 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 11/18/2008 1:38 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Levon Holley	02054	923959	007 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Sheldon	11991	910486	MTS PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Levon Holley	Force: Sgt. Levon Holley struck § 87(2)(b) with a blunt instrument.	
B.SGT Levon Holley	Force: Sgt. Levon Holley struck § 87(2)(b) with an asp.	

## Synopsis

On November 13, 2008 at 10:18pm, § 87(2)(b) who withdrew his own complaint with the CCRB regarding this incident, physically assaulted his ex-girlfriend, § 87(2)(b) and her friend, § 87(2)(b) while they were trying to get into a taxicab driven by § 87(2)(b) on Madison Avenue and East 38<sup>th</sup> Street in Manhattan. § 87(2)(b) ran off, and § 87(2)(b) and § 87(2)(b) flagged down Sgt. Levon Holley, who happened to be driving by, alone in his marked car, on a detail assignment. While Sgt. Holley spoke to them, § 87(2)(b) returned. When § 87(2)(b) and § 87(2)(b) decided to press charges and Sgt. Holley attempted to place § 87(2)(b) in handcuffs, § 87(2)(b) ran across East 38<sup>th</sup> Street to 5<sup>th</sup> Avenue. Along the way, an unidentified § 87(2)(b) officer began to help Sgt. Holley.

§ 87(2)(b) who was being driven down 5<sup>th</sup> Avenue at the time of this occurrence, witnessed Sgt. Holley allegedly strike § 87(2)(b) repeatedly in the stomach with his asp (**allegation a**). A struggle ensued, and § 87(2)(b) grabbed the asp from Sgt. Holley, at which point Sgt. Holley took § 87(2)(b) to the ground. § 87(2)(b) exited his vehicle and saw Sgt. Holley on top of § 87(2)(b) while the off-duty corrections officer held § 87(2)(b)'s legs. Sgt. Holley repeatedly struck § 87(2)(b) in the head with a blunt instrument (**allegation b**). § 87(2)(b) told Sgt. Holley, "You hit that guy one more fucking time, I'm going to lock you up," causing Sgt. Holley to stop hitting § 87(2)(b) and make eye contact with § 87(2)(b). Backup officers arrived to the scene, and § 87(2)(b) was removed to § 87(2)(b) as an emotionally disturbed person. § 87(2)(b) § 87(2)(b) pled guilty to § 87(2)(b) § 87(2)(b).

It is not in dispute that Sgt. Holley hit § 87(2)(b) with his asp. § 87(2)(g)

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b) a § 87(2)(b) white male, who stands at 5'10" and weighs 190 pounds, is the § 87(2)(b) § 87(2)(b) is also an § 87(2)(b) (encl. 7f) and was the § 87(2)(b). § 87(2)(b) filed his complaint directly with Chief Charles Campisi of the NYPD Internal Affairs Bureau on November 14, 2008 and it was received at the CCRB on November 18, 2008 (encl. 4a-b, 5a-c). On November 24, 2008, § 87(2)(b) provided a phone statement (encl. 6a-b) and was interviewed at the CCRB on December 1, 2008 (encl. 7a-g). § 87(2)(b)'s statements § 87(2)(g) have been summarized below.

On November 13, 2008, at about 10:18pm, § 87(2)(b) was traveling home in a Chevy Tahoe SUV after attending a black-tie event at the Metropolitan Museum of Art. § 87(2)(b) does not drink alcohol. § 87(2)(b) is a part-time driver. § 87(2)(b) is a § 87(2)(b) § 87(2)(b) was sitting behind § 87(2)(b) and next to an unidentified friend § 87(2)(b) would not provide his name as his friend did not want to participate in this investigation). § 87(2)(b)

It was raining heavily, but traffic was moving. Just after passing E. 38<sup>th</sup> Street while traveling south on 5<sup>th</sup> Avenue in Manhattan, § 87(2)(b) stopped short and said something similar to, “Holy shit!” or “Did you see that?” § 87(2)(b) asked what happened, because the windows were fogged up from the cold and rain and § 87(2)(b) was blocking his view. § 87(2)(b) explained that a male, identified through investigation as § 87(2)(b) suddenly ran from east to west across 5<sup>th</sup> Avenue through traffic on their block,

The windshield wipers wiped away some of the condensation on the right front window so they could see what was happening. § 87(2)(b) looked to his right, which was west. § 87(2)(b) had his back to the building and was facing towards the avenue. Sgt. Holley was on his left side and his torso was facing north, up 5<sup>th</sup> Avenue, and they were at a 90-degree angle to each other. § 87(2)(b) saw Sgt. Holley swinging an asp with both hands across the front of his own body and into the stomach of § 87(2)(b) as if he was swinging a baseball bat, with the end quarter of the baton hitting § 87(2)(b) in the stomach. § 87(2)(b) doubled over, although he did not fall to the ground. Sgt. Holley hit him at least two more times, in the same manner. § 87(2)(b) § 87(2)(b) and had been trained to use an asp only on the legs or knees, and because he was witnessing improper use of an asp, he still believed he was witnessing a security guard.

§ 87(2)(b) exited from the back door on the driver's side. § 87(2)(b) then walked around the back of the vehicle. During the approximately 30 seconds § 87(2)(b) spent exiting the vehicle and walking towards the sidewalk, he was unable to see what was happening between Sgt. Holley and § 87(2)(b).

Sgt. Holley then hit § 87(2)(b) just above his forehead about three times with an unidentified blunt object, possibly a radio, flashlight, or collapsed asp. Sgt. Holley pulled his hand up two-to-three feet with each hit. § 87(2)(b) was struggling underneath Sgt. Holley. Because of Sgt. Holley's repeated hits to § 87(2)(b)'s head, § 87(2)(b) was under the impression that Sgt. Holley was not going to stop. § 87(2)(b) said, "You hit that guy one more fucking time, I'm going to lock you up." § 87(2)(b) explained in his interview that he did not actually think he could arrest Sgt. Holley. § 87(2)(b)

Within 20 seconds, backup officers began arriving. The first car, which was marked, arrived traveling north (the wrong way) on 5<sup>th</sup> Avenue and parked directly in front of them. Four unidentified uniformed officers came out of that car and climbed on top of § 87(2)(b) who continued yelling. The off-duty corrections then got off of § 87(2)(b). Two seconds later a van pulled up and two-to-four more unidentified uniformed officers came out of that car and got on top of § 87(2)(b). A third car pulled up with at least one unidentified uniformed lieutenant, described as a middle-aged white male who may have had a

mustache. § 87(2)(b) believed most of the officers were white, but beyond that was unable to provide any more specific details. Sgt. Holley remained near the officers and § 87(2)(b) did not see any injuries on the civilian or any blood. § 87(2)(b) did not see anyone use pepper-spray or threaten to use pepper-spray at any point and did not hear § 87(2)(b) mention being pepper-sprayed. § 87(2)(b) refused to be handcuffed and yelled, "He saw everything, talk to that guy, get that guy's name," referring to § 87(2)(b).

§ 87(2)(b) turned around and saw that § 87(2)(b) was talking to the off-duty corrections officer. § 87(2)(b) later told § 87(2)(b) that the off-duty corrections officer told § 87(2)(b) that he had seen Sgt. Holley chasing § 87(2)(b) about a block away and was trying to help, and mentioned something about § 87(2)(b) harassing two women. § 87(2)(b) did not obtain the name or any contact information for the off-duty corrections officer, who then left the scene.

§ 87(2)(b) and § 87(2)(b)'s friend urged him to leave the scene. § 87(2)(b) went up to the unidentified lieutenant and, without identifying himself, asked if he could speak to him, but the lieutenant looked at § 87(2)(b) and then looked away and ignored him. § 87(2)(b) then left the scene.

### **Results of Investigation**

#### **VICTIM AND WITNESS STATEMENTS**

§ 87(2)(b) a § 87(2)(b) Hispanic male who works at § 87(2)(b) filed a complaint with the CCRB on November 18, 2008, via the call processing system (encl. 5a-c). Voicemail messages were left for § 87(2)(b) on November 24, December 2, and December 3, 2008. A first contact letter was mailed on November 24, 2008, and a final contact letter was sent via email and the United States Postal Service on December 3, 2008. On December 4, 2008, § 87(2)(b) left a voicemail message stating that he would call back. Subsequent voicemail messages were left for § 87(2)(b) on December 5 and December 8, 2008. On December 11, 2008, § 87(2)(b) called and the undersigned investigator gave him an explanation of the jurisdiction of the CCRB and the investigative process. § 87(2)(b) said he wanted to confer with his attorney and would call back. On December 30, 2008, § 87(2)(b) called and withdrew his complaint of his own free will because he did not want to go through the investigative process; his signed withdrawal letter is included in the case file (encl. 18r).

When § 87(2)(b) filed his complaint, he provided additional information that § 87(2)(b) did not witness. § 87(2)(b) stated that police officers [sic] were interviewing two women, and tried to arrest him without having "any communication." An officer tried to apprehend § 87(2)(b) who tried to "create space". When § 87(2)(b) was hit with an asp, § 87(2)(b) "freed" the asp from the officer. § 87(2)(b) stated that he was handcuffed and beaten, but did not provide specific details of how he was beaten. § 87(2)(b) was arrested for an "alleged assault" and received unspecified injuries to the top right part of his forehead, the bottom right area of his chin, his left elbow, bruises on his right arm and knees, and loss of feeling in his hands. § 87(2)(b) was removed to § 87(2)(b) because he was bleeding. § 87(2)(b) provided the name and shield number of Sgt. Holley, who he described as a tall white uniformed male who was under 6' and in his mid-30s, but did not attribute any actions to Sgt. Holley. § 87(2)(b) said there were two to three subject officers.

Sgt. Joseph Castro of Manhattan South Investigations also called in a complaint to the IAB call center on November 14, 2008, stating that § 87(2)(b) was alleging that before and after he was handcuffed he was beaten by unidentified officers. § 87(2)(b) sustained an abrasion to the right side of his forehead, redness around the face due to pepper-spray, and redness to the knees. § 87(2)(b) was removed to § 87(2)(b) and was treated and released with no broken bones or stitches (encl. 4a-b).

#### ***Arrest Photo***

§ 87(2)(b)'s arrest photo (encl. 16a) shows a large bruise on his right temple, which begins at his hairline. It is about as wide as his eyebrow and towards his nose it stops about an inch above his eyebrow, but on the far right edge the bruise almost reaches his eyebrow.

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) white female who works at § 87(2)(b) and is named in the Complaint Report against § 87(2)(b) provided a detailed phone statement on December 9, 2008 (encl. 8a) and provided additional information in a phone call on January 16, 2009 (IA #75). § 87(2)(b) witnessed the incident as it occurred prior to what § 87(2)(b) witnessed.

On November 13, 2008, § 87(2)(b) who is the ex-girlfriend of § 87(2)(b) was at a work event at Japas 38, a karaoke bar at 9 East 38th Street between Madison Avenue and 5th Avenue in Manhattan. § 87(2)(b) who works for the same company, had been drinking at the event. § 87(2)(b) thought he was possibly intoxicated, given his irrational behavior regarding this incident. § 87(2)(b) felt that since she ended their relationship four months prior to this incident, § 87(2)(b) had become “obsessed” with her, contacting her many times, even though she was ignoring his contact attempts, and this may have also explained his behavior.

At about 10pm, § 87(2)(b) left the event with her friend, § 87(2)(b). § 87(2)(b) followed her out, pulling on her arm and yelling at her and § 87(2)(b) to such an extent that a stranger walking down the street asked if they needed help. § 87(2)(b) declined the help.

§ 87(2)(b) reached East 38<sup>th</sup> Street and Madison Avenue and hailed a cab and got in. As § 87(2)(b) tried to enter the cab, § 87(2)(b) pushed § 87(2)(b) out of the way and jumped into the cab instead, and began a physical struggle with § 87(2)(b). The cab driver, identified through investigation as § 87(2)(b) threatened to call the police. § 87(2)(b) said, “Call the cops, I don’t care, fuck you.” § 87(2)(b) tried to stop § 87(2)(b) by hitting and kicking him, but he was still able to pull § 87(2)(b) out of the cab by her leg. In the process, he knocked her head onto the concrete and dragged her around the corner back onto East 38<sup>th</sup> Street. When § 87(2)(b) stood up, § 87(2)(b) hit her on the side of her head and knocked her down to the ground.

§ 87(2)(b) ran away. § 87(2)(b) walked around the corner with § 87(2)(b) to Madison Avenue, and to an officer, identified through investigation as Sgt. Levon Holley, who § 87(2)(b) described as a black male, 6’, thin athletic build, in uniform, black hair, and around 30 years old. § 87(2)(b) was unsure where the police officer came from, but was under the impression that § 87(2)(b) hailed him down. There was a marked police car, but Sgt. Holley was alone.

As § 87(2)(b) and § 87(2)(b) began giving their statements to Sgt. Holley, § 87(2)(b) reappeared. § 87(2)(b) was being belligerent and was talking close to Sgt. Holley’s face, saying, “You’re really going to do this? You’re really going to ask me questions?” § 87(2)(b) pushed his chest against Sgt. Holley’s shoulder in an aggressive manner while he spoke to him. Sgt. Holley was calm throughout the interaction and ignored § 87(2)(b) when he did this. Sgt. Holley turned to § 87(2)(b) and asked her if she wanted to press charges, and she said she did. § 87(2)(b) who continued his adversarial stance, said, “You’re really not taking me in, right?”

Sgt. Holley told § 87(2)(b) that he would have to take him in. § 87(2)(b) turned a little bit, as if he was going to give his hands to the officer to be handcuffed and then suddenly ran away. Sgt. Holley ran after § 87(2)(b). § 87(2)(b) saw them run down East 38<sup>th</sup> Street towards 5<sup>th</sup> Avenue, but did not see them after that. § 87(2)(b) did not see Sgt. Holley take out any pepper-spray or deploy any pepper-spray.

Because it was raining, § 87(2)(b) and § 87(2)(b) waited under the awning of the building they were in front of on Madison Avenue for Sgt. Holley to come back. While they were waiting, another police car pulled up and confirmed that they were the women involved in the incident. The officers had them get in their car and took § 87(2)(b) and § 87(2)(b) to the 14<sup>th</sup> Precinct stationhouse. § 87(2)(b) saw Sgt. Holley at the stationhouse and he had a bandage on his hand.

§ 87(2)(b)

§ 87(2)(b) a § 87(2)(b) white female who works at § 87(2)(b) and is named in the Complaint Report against § 87(2)(b) provided a detailed phone statement on December 10, 2008 (encl. 9a-b) and provided additional information over the phone on January 22, 2009 (IA #78).

§ 87(2)(g)  
§ 87(2)(b) and § 87(2)(b) had gone to a different bar first with other coworkers, and when § 87(2)(b) showed up there, § 87(2)(b) and some other coworkers left and went to Japas 38. When § 87(2)(b) dragged § 87(2)(b) around the corner, § 87(2)(b) and § 87(2)(b) who had already called 911, hailed Sgt. Holley, who was in a marked police car that happened to be driving by. When § 87(2)(b) returned to the scene, he was using the word “fuck” with Sgt. Holley.

§ 87(2)(b)  
§ 87(2)(b) who is a yellow cab driver with Taxi and Limousine license § 87(2)(b) and taxicab medallion #§ 87(2)(b), provided a phone statement on January 16, 2009 (encl. 10a).

§ 87(2)(g)  
§ 87(2)(b) Sgt. Holley tried to arrest § 87(2)(b) he was able to grab one arm before § 87(2)(b) evaded his grip. When Sgt. Holley tried to handcuff § 87(2)(b) he took out his pepper-spray and may have been able to spray it once, but it either missed § 87(2)(b) or had no effect on him, because it was at that point that he ran away.

#### **WITNESSES NOT INTERVIEWED**

§ 87(2)(b) and unidentified friend of § 87(2)(b)  
§ 87(2)(b) stated in his CCRB interview as well as in a follow-up phone call with the CCRB on February 26, 2009 (IA #83, encl. 17i) that § 87(2)(b) and his unidentified friend did not witness this incident. He confirmed that they did not want to participate in this investigation. § 87(2)(b) refused to provide their contact information to the CCRB for this investigation.

#### **Unidentified Corrections Officer**

No officers or civilians were able to provide the name or contact information of the off-duty corrections officer who aided Sgt. Holley in the apprehension of § 87(2)(b). On February 26, 2009, the CCRB contacted the Department of Corrections to determine if any officer filed reports about assisting any members of the NYPD, but no reports had been filed (IA #83, encl. 17i).

#### **VIDEO FOOTAGE**

On November 25, 2008, the undersigned investigator obtained surveillance video from 420 5th Avenue regarding this incident (encl. 12a). Due to the rain and glare from headlights, as well as the fact that the camera captures still images every second instead of constant movement, the images are grainy and blurred and do not provide a clear picture of what happened with Sgt. Holley and § 87(2)(b). Based on the investigation in conjunction with what could be seen in the footage, the following transcription is the best approximation of what did occur. A few images are included in the case file where noted below.

At 10:14:39, two people, presumably § 87(2)(b) and Sgt. Holley, can be seen running onto the block on the video. At 10:14:41, someone, presumably Sgt. Holley, can be seen with an asp in the air. At 10:14:44 (encl. 12b), the same person has an asp in the air again. At 10:14:46-47, the two people struggle towards and against the wall of the building. At 10:14:48, they begin to struggle to the ground. At 10:14:52, they are on the ground, but still struggling.

At 10:15:06 (encl. 12c), § 87(2)(b)'s SUV can be seen moving from the far east lane of 5th Avenue to the far west lane where the incident is occurring. Prior to the SUV pulling from that lane, there was steady traffic between the SUV and the incident on the sidewalk.

At 10:15:12 (encl. 12d), the SUV reaches the sidewalk with the side of the incident, and the interior light of the SUV goes on, indicating a car door has been opened. At 10:15:19, someone, presumably § 87(2)(b) begins stepping onto the sidewalk where the incident is occurring. At 10:15:20 (encl. 12e), the person from the SUV raises one arm in the air. The person then approaches the struggle on the ground.

Due to the glare of headlights, it is unclear when backup officers begin arriving. At 10:15:53, a few new bodies piled on top of the original two people who were struggling on the ground is visible. At 10:15:57, the pile of bodies appears larger, and there is at least one person standing over the pile. At 10:17:45, the

person believed to be § 87(2)(b) begins leaving the sidewalk. At 10:17:52, the SUV door opens. At 10:18:02, the SUV begins backing up a few feet to move into traffic.

At 10:28:24, a truck appears. A lot of people are gathered. By 10:33:00 the sidewalk is completely clear.

## **POLICE OFFICER STATEMENTS**

**Sgt. Levon Holley, 7<sup>th</sup> Precinct**, Subject Officer

### ***Memo Book***

Sgt. Holley did have entries in his memo book regarding this incident (encl. 13a-c): 10:20pm, pick-up of an assault. 10:30pm, 1 under (arrest), § 87(2)(b) Sgt. Holley's memo book reflects he was out with a line of duty injury from November 14 until November 16, 2008. He had his regularly scheduled days off on November 17, November 18, and November 19, 2008, and returned to patrol on November 20, 2008.

### ***CCRB Interview***

Sgt. Levon Holley, a § 87(2)(b)-old black male who stands at 5'11" and weighs 180 pounds and has a bald head, was interviewed at the CCRB on December 22, 2008 (encl. 13d-f).

On November 13, 2008, Sgt. Holley worked from 2:50pm until 4:00am. Sgt. Holley was in a critical response vehicle. This detail has various units from different commands within Manhattan South convene in one location and deploy to various locations throughout the city. Sgt. Holley was alone and was in uniform. Sgt. Holley was in a marked car.

Sgt. Holley was driving northbound on Madison Avenue and was flagged down by a cab driver who said there was a big fight. Sgt. Holley got out to investigate, and saw two women, identified through investigation as § 87(2)(b) and § 87(2)(b). Sgt. Holley stated that the street was well-lit, it was not raining, and the weather was clear. The women told Sgt. Holley that § 87(2)(b)'s ex-boyfriend, § 87(2)(b) assaulted her and § 87(2)(b) who tried to help her. § 87(2)(b) hit § 87(2)(b) in the head and pushed § 87(2)(b) out of the cab and onto the ground when she tried to help. § 87(2)(b) had redness on her forehead. Sgt. Holley asked if the women wanted to file a report and they did. Sgt. Holley called for a sector car to take the report.

Less than two minutes after Sgt. Holley arrived, § 87(2)(b) approached from behind him, and was pointed out by § 87(2)(b). § 87(2)(b) continued to try to talk to § 87(2)(b) in a loud manner with slurred speech, although Sgt. Holley could not recall what he said to her. Because Sgt. Holley knew he was a violent individual from what the women had told him, he tried to keep § 87(2)(b) separate from the women. Sgt. Holley did not notice any other civilians in the area.

Sgt. Holley asked the women if they wanted to press charges, and they said yes. Sgt. Holley asked § 87(2)(b) for his identification. § 87(2)(b) provided his identification and said something about deserving extra credit for coming back because he did not need to return to the scene in the first place. Sgt. Holley informed § 87(2)(b) that he was under arrest and instructed him to put his arms behind his back. § 87(2)(b) refused. Sgt. Holley went to grab his arms and was able to grab a hold of one, but § 87(2)(b) pulled his arm back and out of Sgt. Holley's grip. § 87(2)(b) approached Sgt. Holley and loudly demanded he get his identification back.

Sgt. Holley took out his pepper-spray when § 87(2)(b) was within three feet of him. Sgt. Holley did not give § 87(2)(b) any warning that he was going to deploy the pepper-spray, and then sprayed it towards § 87(2)(b). Sgt. Holley deployed the pepper-spray for multiple reasons: he knew from the women that § 87(2)(b) was a violent individual, § 87(2)(b) ignored Sgt. Holley's command to turn around and place his hands behind his back, § 87(2)(b) pulled away from Sgt. Holley's grip, and § 87(2)(b) approached Sgt. Holley in what he perceived to be a violent manner.

§ 87(2)(b) ran away after he was pepper-sprayed. Sgt. Holley chased § 87(2)(b) westbound towards 5<sup>th</sup> Avenue from Madison Avenue. As Sgt. Holley chased § 87(2)(b) an unidentified "good Samaritan" (Sgt. Holley never learned who he was, but the investigation determined him to be the off-duty corrections officer) became involved when § 87(2)(b) reached the westbound side of 5<sup>th</sup> Avenue. The off-duty

corrections officer was somehow able to cut off § 87(2)(b) using his physical presence. It took a couple seconds for Sgt. Holley to reach them.

§ 87(2)(b) then turned around in a threatening manner. Sgt. Holley took out his asp because the pepper-spray did not stop § 87(2)(b)'s aggressive behavior, and he was ignoring verbal commands, and the next non-lethal device Sgt. Holley had was his asp. Sgt. Holley struck § 87(2)(b) twice in the legs in an X pattern, as per his academy training. Sgt. Holley was unsure where exactly on the legs he hit § 87(2)(b). Sgt. Holley denied hitting § 87(2)(b) in the stomach. Striking § 87(2)(b) in the legs did not stop him, however, and he was still standing. § 87(2)(b) was saying a lot of things during this interaction, but Sgt. Holley could not recall what he was saying. Sgt. Holley was not saying anything or issuing any commands that he could remember.

The off-duty corrections officer then attempted to tackle § 87(2)(b) by wrapping his arms around him, but was struggling. Sgt. Holley went over to try to help, and § 87(2)(b) grabbed the asp from Sgt. Holley.

Sgt. Holley put his arms around § 87(2)(b) in a bear hug to prevent him from swinging the asp at anyone. Sgt. Holley could not recall if § 87(2)(b) was facing him or not when Sgt. Holley grabbed him. Sgt. Holley and § 87(2)(b) fell to the ground, and Sgt. Holley fell on top of § 87(2)(b). Sgt. Holley could not reach his radio because he was afraid that if he let go, § 87(2)(b) would strike him with the asp. § 87(2)(b) was not able to release himself from Sgt. Holley's grip. Sgt. Holley instructed the off-duty corrections officer on how to use his radio to call for assistance. The off-duty corrections officer did this. Sgt. Holley denied hitting § 87(2)(b) in the head.

During the struggle, Sgt. Holley did not see a man in a tuxedo arrive to the scene. Sgt. Holley did not hear anyone say, "You hit that guy one more fucking time, I'm going to lock you up."

About four to five more units arrived to the location. Sgt. Holley could not estimate the amount of time it took for them to arrive. Because the incident did not occur in Sgt. Holley's assigned precinct, he did not know any of the responding officers.

As units arrived, Sgt. Holley did not tell these officers what had happened, they simply began to act. Sgt. Holley was not sure what techniques they used, but the officers assisted with grabbing his hands. After enough officers grabbed § 87(2)(b) and took a hold of him, Sgt. Holley was able to disengage and got up after about 30 seconds, but the backup officers continued to subdue § 87(2)(b). It took about eight police officers to get § 87(2)(b) handcuffed, which took another minute. Sgt. Holley spoke to a lieutenant and sergeant on the scene and explained to them what had happened. Even after § 87(2)(b) was handcuffed, he was still violent and kicking. Because this behavior indicated that § 87(2)(b) could be a danger to himself or the officers, ESU was called to the scene.

ESU officers tried to talk to § 87(2)(b) but were unable to gain compliance with him, so they had to use the "bag". This bag is a "taco-like" device that prevented § 87(2)(b) from kicking or otherwise injuring any more officers. § 87(2)(b) appeared to be intoxicated or on some type of drug due to his slurred speech and irrational behavior, including the extent of his resistance, throughout the incident. Therefore, he was removed to § 87(2)(b) for evaluation. Sgt. Holley did not believe § 87(2)(b) was being removed to treat any physical injuries and did not observe any injuries on him. Sgt. Holley was shown the arrest photo of § 87(2)(b) with the large bruise on his forehead, but Sgt. Holley did not know where it came from.

Sgt. Holley went back to Madison Avenue to speak to § 87(2)(b) and § 87(2)(b). The cab driver, identified through investigation as § 87(2)(b), confirmed that § 87(2)(b) was involved in the altercation in his cab. Sgt. Holley did not know when the off-duty corrections officer left the scene.

Sgt. Holley did not go to § 87(2)(b) or see § 87(2)(b) again after that night. § 87(2)(b) was processed at the Manhattan South (14<sup>th</sup>) Precinct, which is not Sgt. Holley's command, so he was not involved in § 87(2)(b)'s processing.



Sgt. Holley sustained injuries to his shoulder and knee and went to [REDACTED] § 87(2)(b) [REDACTED] § 87(2)(b). Sgt. Holley was out for three days due to the injuries he received from this incident. Sgt. Holley was not sure exactly at what point during the struggle he received his injuries.

#### **POLICE OFFICERS NOT INTERVIEWED**

**Officer Michael Sheldon, 14<sup>th</sup> Precinct**, Witness Officer

Officer Sheldon was the assigned arresting officer, but by all accounts no officer witnessed the alleged physical force. § 87(2)(g) [REDACTED]

#### ***UF-61 Complaint Reports***

Complaint § 87(2)(b) [REDACTED] (encl. 14a-c) against § 87(2)(b) [REDACTED] lists § 87(2)(b) [REDACTED] as the victim and § 87(2)(b) [REDACTED] as the witness. It states that at the southeast corner of 5<sup>th</sup> Avenue and East 34<sup>th</sup> Street [sic] she was punched in the head by § 87(2)(b) [REDACTED] with a closed fist, knocking her to the ground, causing substantial pain. When the arresting officer, Sgt. Holley, arrived to arrest § 87(2)(b) [REDACTED] he fled. After a brief struggle, § 87(2)(b) [REDACTED] did remove the arresting officer's asp/stick by force. § 87(2)(b) [REDACTED] and Sgt. Holley fell to the ground, which caused injuries to both.

Complaint # § 87(2)(b) [REDACTED] (encl. 14d-f) § 87(2)(g) [REDACTED], but the victim in this complaint is Sgt. Holley. It contains the additional information that Sgt. Holley sustained an injury to his right knee and shoulder and was removed to § 87(2)(b) [REDACTED]

#### ***OLBS Arrest Report***

The OLBS arrest report for § 87(2)(b) [REDACTED] (encl. 14g-§ 87(2)(g) [REDACTED]) It lists § 87(2)(b) [REDACTED]'s physical condition as intoxicated with alcohol, and the charges against him are § 87(2)(b) [REDACTED] § 87(2)(b) [REDACTED]

#### ***Criminal Court Complaint***

In the Criminal Court Complaint (encl. 14i-j), Officer Sheldon lists the deponents as § 87(2)(b) [REDACTED], and Sgt. Holley. § 87(2)(g) [REDACTED]

#### ***Prisoner Pedigree Card***

The Prisoner Pedigree Card for § 87(2)(b) [REDACTED] (encl. 14k) does not list any information about his condition and simply has contact information, location of incident, primary charge, and that medical attention was requested.

#### ***Voucher***

Voucher § 87(2)(b) [REDACTED] (encl. 14l) lists one iPhone.

#### ***Handwritten Notes***

A page of handwritten notes (encl. 14m) was enclosed with the requested documents for this case. It lists pedigree information for § 87(2)(b) [REDACTED] provides AIDED information regarding Sgt. Holley, including that he saw § 87(2)(b) [REDACTED] and received a bruise to his right knee and shoulder, provides a phone number for the "cab driver", and contact and pedigree information for § 87(2)(b) [REDACTED] and § 87(2)(b) [REDACTED]. It also lists the start of the incident as East 38<sup>th</sup> Street and Madison Avenue and the finish as 5<sup>th</sup> Avenue between W. 37<sup>th</sup> Street and W. 38<sup>th</sup> Street.

#### **MEDICAL RECORDS**

Because § 87(2)(b) [REDACTED] did not participate in this investigation, no medical records or ambulance call report (as he was taken to § 87(2)(b) [REDACTED] by a private ambulance service) could be obtained regarding his treatment.

## **POLICE DOCUMENTS**

### ***SPRINTs***

SPRINT § 87(2)(b) (encl. 15b)

At 10:11pm on November 13, 2008, an unidentified person (§ 87(2)(b)) called 911 to report fighting inside of his yellow taxi. There were two females in the auto.

SPRINT § 87(2)(b) (encl. 15c-f)

At 10:18pm on November 13, 2008, a call for additional units for an officer outside was placed at East 37<sup>th</sup> Street and 5<sup>th</sup> Avenue. In the audio CD of the call, the caller, who has a strong New York accent (which Sgt. Holley did not have in his interview), does not identify himself despite repeated requests from the dispatcher. At 10:18pm, sector A and a sergeant from the 14<sup>th</sup> Precinct arrived at the scene. At 10:19pm, the 14<sup>th</sup> Precinct sergeant made a call for no further units and identified the call for assistance as coming from a 7<sup>th</sup> Precinct detail sergeant.

At 10:20pm, ESU was called to the location for a prisoner and specified a minute later that the prisoner needed to be “bagged”. At 10:23pm, EMS was requested for an emotionally disturbed person. At 10:27pm, another sergeant from the 14<sup>th</sup> Precinct responded. At 10:29pm, under the authority of sector A, they were to “bag” the emotionally disturbed person at the location. At 10:34pm, ESU confirmed the prisoner was in custody. According to the first 14<sup>th</sup> Precinct sergeant on the scene, there were no injuries to members of the service. At 10:42pm, a sergeant from the 17<sup>th</sup> Precinct called for assistance. At 10:43pm, sector E of the 17<sup>th</sup> Precinct transported two females and resumed patrol. At 10:46pm, EMS was needed to East 38<sup>th</sup> Street and 5<sup>th</sup> Avenue for injuries to the complainant. At 10:50pm, sector A of the 14<sup>th</sup> Precinct resumed patrol.

At 11:00pm, an ambulance was called to the 14<sup>th</sup> Precinct stationhouse. At § 87(2)(b) the ambulance was en route to § 87(2)(b). At § 87(2)(b) sector E of the 17<sup>th</sup> Precinct was en route to the hospital, and an ambulance was going to § 87(2)(b). At 11:32pm, sector G of the 14<sup>th</sup> Precinct resumed patrol. At 11:37pm, sector A of the 14<sup>th</sup> Precinct noted an arrest. At § 87(2)(b) sector A of the 14<sup>th</sup> Precinct arrived at § 87(2)(b). Within the following 11 minutes, the two responding sergeants from the 14<sup>th</sup> Precinct, 17<sup>th</sup> Precinct sergeant, and sector E from the 17<sup>th</sup> Precinct resumed patrol. At 6:39am, sector A of the 14<sup>th</sup> Precinct reported a final disposition—crime/arrest.

### ***Command Log***

The 14<sup>th</sup> Precinct Command Log (encl. 15g) registered § 87(2)(b)'s arrest at 12:15am and has Officer Sheldon as the arresting officer. It indicates in the margin that § 87(2)(b) went directly to § 87(2)(b) and returned to the 14<sup>th</sup> Precinct stationhouse § 87(2)(b). His physical condition was listed as intoxicated with a bruise on the top of his head. He was taken to Manhattan Central Booking at 11:00am.

### ***AIDED***

Sgt. James Fritz of the 17<sup>th</sup> Precinct was the reporter for Sgt. Holley's AIDED report (encl. 15h-l). Sgt. Holley sustained undisclosed injuries to his right shoulder, knee, and hand, along with substantial pain to his back.

### ***Medical Treatment of Prisoner***

In the Medical Treatment of Prisoner form for § 87(2)(b) (encl. 15m), it states that he arrived at § 87(2)(b) at § 87(2)(b). § 87(2)(b) had abrasions to his head. Cuffs, straps, and a bag had to be used as restraining devices, and ESU responded to the scene. The only remarks were that § 87(2)(b) was medically cleared.

### ***ESU Report***

The ESU report (encl. 15n) listed Sgt. Sean McCarthy of the 17<sup>th</sup> Precinct as the reporting officer. The details provided are that the ESU team used an emotionally disturbed person “bag” to restrain male AIDED to a § 87(2)(b).

## CRIMINAL CONVICTION HISTORY

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

## CIVILIAN CCRB HISTORIES

This is the first complaint filed by § 87(2)(b) (encl. 3a). § 87(2)(b) filed one previous complaint with this agency § 87(2)(b)

## OFFICER CCRB HISTORIES

During Sgt. Holley's 9-year tenure on the force, he has had no allegations substantiated against him (encl. 2a).

## Conclusions and Recommendations

## OFFICER IDENTIFICATION AND PLEADING

§ 87(2)(g)

## AGREED FACTS AND ISSUES IN DISPUTE

The following facts are **not in dispute**: § 87(2)(b) resisted arrest, Sgt. Holley struck § 87(2)(b) with an asp, which § 87(2)(b) then grabbed, § 87(2)(b) ended up on the ground, and he was arrested and removed to § 87(2)(b)

§ 87(2)(g)

## ASSESSMENT OF EVIDENCE

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) and § 87(2)(b) stated specifically that Sgt. Holley never took out his pepper-spray or tried to pepper-spray § 87(2)(b). Sgt. Holley, however, stated that he did pepper-spray § 87(2)(b) before he ran away, and § 87(2)(b) stated that he saw Sgt. Holley take out pepper-spray but could not see if Sgt. Holley used it. In the IAB complaint, Sgt. Castro states that § 87(2)(b)'s face was red from being pepper-sprayed, although it was not specified when the pepper-spray occurred. § 87(2)(g)

The investigation determined that § 87(2)(b) ran from East 38<sup>th</sup> Street and Madison Avenue to the west side of 5<sup>th</sup> Avenue between West 37<sup>th</sup> Street and West 38<sup>th</sup> Street. It is unclear at what point the unidentified off-duty corrections officer began aiding Sgt. Holley or what he did. Sgt. Holley stated that the off-duty corrections officer was able to use his physical presence to stop § 87(2)(b) who appeared to square off against Sgt. Holley. Sgt. Holley admitted that he took out his asp and explained that because § 87(2)(b) did not adhere to verbal commands, was not affected by pepper-spray, and because he had already assaulted § 87(2)(b) and § 87(2)(b) and was therefore known to be violent, Sgt. Holley used the

next non-lethal device available to him, and struck § 87(2)(b) in the legs, as per NYPD training. § 87(2)(g)

§ 87(2)(b) stated that he saw Sgt. Holley hit § 87(2)(b) in the stomach, which he knew § 87(2)(b) was improper. § 87(2)(g)

Sgt. Holley stated that when § 87(2)(b) took the asp from him, Sgt. Holley put § 87(2)(b) in a bear hug and tackled him to the ground. Sgt. Holley stated that he had the off-duty corrections officer grab his radio and call for assistance for fear that § 87(2)(b) who could not release his grip, would escape being restrained. § 87(2)(g)

§ 87(2)(b) stated that once he got out of the car, he saw Sgt. Holley sitting on top of § 87(2)(b) with the off-duty corrections officer holding § 87(2)(b)'s legs. § 87(2)(g) It was at this point that § 87(2)(b) saw Sgt. Holley repeatedly striking § 87(2)(b) near the forehead with an object, possibly a radio, flashlight, or collapsed asp. § 87(2)(b) then told Sgt. Holley, "You hit that guy one more fucking time, I'm going to lock you up." § 87(2)(b) stated that Sgt. Holley made eye contact with § 87(2)(b). Sgt. Holley denied striking § 87(2)(b) in the head. Sgt. Holley, who was interviewed five weeks after the incident, also denied seeing a man in a tuxedo or hearing the sentence that § 87(2)(b) uttered. § 87(2)(g)

§ 87(2)(b) had no relationship with § 87(2)(b) and stated he filed his complaint because he was upset by what he viewed as excessive physical force. § 87(2)(g)

Although § 87(2)(b) did not participate in this investigation, the arrest photo shows a large bruise on his forehead. Sgt. Holley was unable to explain where this bruise came from. § 87(2)(g)

#### **Allegation A: Sgt. Levon Holley struck § 87(2)(b) with a nightsick.**

It is not in dispute that Sgt. Holley hit § 87(2)(b) with an asp. § 87(2)(g) § 87(2)(b). Sgt. Holley stated that he used his asp because he knew § 87(2)(b) was violent and ignored his verbal commands, facts of which are not in dispute, and because he pepper-sprayed § 87(2)(b) and it did not work. § 87(2)(g)

§ 87(2)(g) Sgt.  
Holley stated that he used his asp on § 87(2)(b) s legs, as he was trained to do in the academy.

§ 87(2)(b) however, stated that Sgt. Holley hit § 87(2)(b) repeatedly in his stomach. The NYPD *Police Student's Guide* states that striking someone with an asp to certain areas of the body, including the solar plexus, is a form of deadly force, and to “stay away from those areas unless the circumstances justify the use of deadly force (encl. 1a).” *Patrol Guide Procedure 203-11* states that officers should only use the “minimum” amount of force necessary in effecting an arrest (encl. 1e-f). § 87(2)(g)

**Allegation B: Sgt. Levon Holley struck § 87(2)(b) with a blunt instrument.**

§ 87(2)(g)

In *Patrol Guide Procedure 203-11* (encl. 1e-f), it states that officers are to use the “minimum” amount of physical force necessary in effecting an arrest and “excessive force will not be tolerated.” Resisting arrest raises the threshold level of reasonable force that can be used by an officer (see *PD v. Hernandez*, encl. 1gg). § 87(2)(g)

§ 87(2)(b). In *PD v. Salas* (encl. 1cc-dd), the Administrative Law Judge held that striking a civilian in the head and face after being handcuffed was “wholly gratuitous ... [and] without any justification.” § 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: